

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210



JUN 15 1995

Dear

This is in response to your letter requesting an opinion concerning the application of the Fair Labor Standards Act (FLSA) to correctional officers who also wish to volunteer their services as law enforcement officers for the _____ County Sheriff's Office.

You state that correctional officers are employed by a regional jail that is advised by a separate jail board and under the supervision of a jail administrator. This board consists of individuals from three member jurisdictions. The sheriff of each jurisdiction is, by law, a jail board member but does not have input into the day to day operational decisions pertaining to the regional jail. Jail employees fall under the personnel policies of the same jurisdiction of the sheriff's office in which they want to volunteer. In addition, the county in which they want to volunteer as deputies is the fiscal agent for the regional jail.

Under the FLSA, an individual cannot be both a paid employee and an unpaid "volunteer" while performing the same type of services which the individual is employed to perform for his or her employer. The phrase "same type of services" means similar or identical services. Based on the information provided, the jail and the sheriff's office do not appear to be separate independent employers.¹ Thus, correctional officers employed by the jail may not volunteer additional services to the sheriff's office in the same capacity without compensation in accordance with the provisions of the FLSA, as indicated in the letter of October 20, 1993, to which you refer.

In amending the FLSA in 1985, the Congress made it clear that it did not intend to discourage or impede volunteer activities undertaken for civic, charitable, or humanitarian purposes, but

¹In accordance with 29 CFR §553,102, two agencies of the same State or local government are considered to be separate public agencies where they are so treated by the Census of Governments issued by the Bureau of Census, U.S. Department of Commerce.

also expressed its wish to prevent any manipulation or abuse of minimum wage or overtime requirements through coercion or undue pressure upon individuals to "volunteer" their services. Therefore, §3(e)(4) of the FLSA forbids an individual from volunteering the same type of services to his or her employer that the individual is employed to perform by the employer without compensation in accordance with the provisions of the FLSA.

To allow correctional officers (or any employees) to "volunteer" the same services for which they are paid, raises the potential for abuse which Congress had in mind in enacting §3(e)(4). See Senate Report No. 99-159, October 17, 1985, page 14, 2 U.S. Cong. News 1985, page 662 ("the Committee wishes to prevent any manipulation or abuse of minimum wage requirements through coercion or undue pressure upon employees to 'volunteer'").

We trust that the above information is responsive to your inquiry. If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator